

**GATX**

4-312 A 100

GATX CORPORATION

120 SOUTH RIVERSIDE PLAZA  
CHICAGO, IL 60606  
312-621-6200

No. \_\_\_\_\_  
Date NOV 7 1984

Fee \$ 10.00

ICC Washington, D.C.

LAW DEPARTMENT

14468

RECORDATION NO. \_\_\_\_\_ Filed 1425

NOV 7 1984 - 10 45 AM

November 6, 1984

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
Room 2303  
12 and Constitution, N.W.  
Washington DC 20423

Re: Equipment Leases

Ladies and Gentlemen:

Enclosed please find four (4) original copies of a Railroad Equipment Lease, which has been executed by all parties thereto and duly notarized. Enclosed please also find \$10 to cover the recordation costs.

I would appreciate your recording one copy of the Lease and returning to me the other copies marked by your office.

If you have any questions, please do not hesitate to call me at (312)621-4578.

Very truly yours,

*John Levin*  
John Levin

JDL:bn  
634B  
Enclosures

*The Bank of N. Y.  
48 Wall St  
N. Y. N. Y.*

ICC OFFICE OF  
THE SECRETARY  
NOV 7 10 34 AM '84  
MOTOR OPERATING UNIT

*Consent  
Paul R. Schul*

Interstate Commerce Commission  
Washington, D.C. 20423

11/7/84

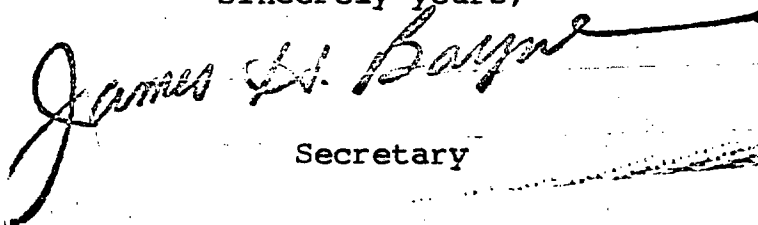
OFFICE OF THE SECRETARY

John Levin  
GATX Corporation  
120 South Riverside Plaza  
Chicago, Illinois 60606

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/7/84 at 10:45am and assigned re-recording number(s). 14468

Sincerely yours,

  
Secretary

Enclosure(s)

EQUIPMENT LEASE

14468  
REGISTRATION NO. .... FILED 1425

NOV 7 1984 - 10 45 AM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE, dated as of November 2, 1984, between THE BANK OF NEW YORK, a New York banking corporation (the "Lessor"), and General American Transportation Corporation, a New York corporation (the "Lessee").

RECITALS:

A. The Lessee has heretofore purchased certain personal property consisting of railroad equipment (collectively the "Equipment" and, individually, an "Item of Equipment") generally described in Exhibit A annexed hereto from various manufacturers thereof identified in said Exhibit (each a "Manufacturer" and, collectively, the "Manufacturers").

B. The Lessee desires to lease rather than own the Equipment at the rentals and upon the terms and conditions hereinafter provided.

C. In order to arrange for the acquisition by the Lessor of the Equipment, the Lessee will sell the Equipment to the Lessor pursuant to a Bill of Sale, dated the date hereof, in the form annexed hereto as Exhibit B (the "Bill of Sale") for the purchase price set forth in Exhibit A (the "Purchase Price") and will assign to the Lessor certain of the Manufacturers' warranties with respect to the Equipment pursuant to an Assignment of Warranties, dated the date hereof, in the form annexed hereto as Exhibit C (the

"Assignment"), which Assignment has been consented to by the respective Manufacturers.

THE LESSEE AND THE LESSOR HEREBY AGREE AS FOLLOWS:

SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1 Lease of Equipment. Upon the acquisition by the Lessor of the Equipment from the Lessee, the Lessor agrees to lease the Equipment to the Lessee and the Lessee agrees to lease the Equipment from the Lessor on the terms and conditions set forth herein.

1.2 Inspection and Acceptance; Term of Lease. The Lessee acknowledges that it has inspected the Equipment, and that, subject to Section 1.3 hereof, the Equipment meets all of the Lessee's specifications therefor, and the Lessee agrees that it will accept delivery thereof and execute and deliver to the Lessor a Certificate of Acceptance substantially in the form of Exhibit D annexed hereto (the "Certificate of Acceptance") on the Settlement Date (as hereinafter defined).

It is contemplated that the Equipment will be delivered and accepted hereunder on a date (the "Settlement Date") on or before November 2, 1984 upon which, subject to the fulfillment of the conditions set forth in Section 3 hereof, the Equipment shall be acquired by the Lessor and leased hereunder to the Lessee.

Subject to the provisions of Sections 11 and 20 hereof, the term of this Lease shall commence on the Settlement Date and shall terminate on November 1, 2004.

1.3 Certificate of Acceptance. The Lessee's execution and delivery to the Lessor of a Certificate of Acceptance with respect to the Equipment shall conclusively establish that, as between the Lessor and the Lessee, but without affecting the Lessee's rights, if any, against any Manufacturer, each such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect in design, manufacture, condition or in any other respect, and that each such Item of Equipment is in good order and condition, conforms to the Lessee's specifications, and is marked in accordance with Section 4.2 hereof. The Lessee shall be deemed to represent all of the foregoing as of the date of such acceptance.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1 Rentals for Equipment. The Lessee agrees to pay the Lessor for each Item of Equipment leased hereunder installments of fixed rental (the "Fixed Rental") in immediately available funds semi-annually in arrears, commencing on May 1, 1985 and continuing on each November 1, and May 1 thereafter during the term of this Lease in respect of such Item, in a sum equal to 6.079635% of the Purchase Price thereof.

2.2 Place and Time of Payment. The Lessee shall make all payments to the Lessor hereunder by wire transfer in immediately available funds to:

The Bank of New York  
48 Wall Street  
General Ledger A/C No. 1742610  
Center No. 0101200  
Notify Leasing Department  
Ref: General American Transportation  
Corporation

(or such other place and account as the Lessor may specify from time to time), on the date on which such payments are payable hereunder. In the case of rental payments under this Section 2 and payments of Casualty Value under Section 11 hereof, the Lessee agrees to identify the same as Fixed Rental or Casualty Value payments, as the case may be.

2.3 Net Lease. This Lease is a net lease. The Lessee's obligations to pay all rentals and other amounts hereunder shall be absolute and final, and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise, or against any Manufacturer, nor, except as otherwise expressly provided herein, shall this Lease terminate, or the obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to the Equipment or any defect in, or damage to, or the theft, loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisition of the Equipment by condemnation or otherwise, the prohibition of or restriction on the Lessee's use of the Equipment, the interference with such use by any private person or corporation, any strike or other labor dispute, the invalidity or unenforceability or lack of due authorization or any other infirmity of this Lease, or the lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until

the Equipment is returned to the Lessor pursuant to Section 13 hereof. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

SECTION 3. CONDITIONS PRECEDENT TO SETTLEMENT DATE. The obligation of the Lessor to acquire and lease the Equipment is subject to the fulfillment by the Lessee of the following conditions precedent on or prior to the Settlement Date:

3.1 Assignment of Warranties. The Lessor shall have received the Assignment of Warranties duly executed by the Lessee and consented to by the Manufacturers.

3.2 Financing Statements. The Lessor shall have received satisfactory evidence of the fact that Uniform Commercial Code Financing Statements, in form and substance satisfactory to counsel to the Lessor, have been filed in the office of the Secretary of State of the State of New York and in each other public filing office which, in the opinion of counsel to the Lessor, is necessary in order to protect and perfect its interests hereunder.

3.3 Insurance. The Lessor shall have received certificates of insurance evidencing compliance by the Lessee with the provisions of Section 11.6 hereof.

3.4 Authority of Lessee. The Lessor shall have received a certificate of the Secretary of the Lessee (i) attaching a copy of the certificate of incorporation and by-laws of the Lessee, (ii) attaching a copy of a resolution of the Board of Directors of the Lessee authorizing the execution and delivery of this Lease, the Assignment of Warranties, the Bill of Sale, the Tax Indemnity Agreement (as hereinafter defined) and all documents required to be executed and delivered by the Lessee hereunder and thereunder, (iii) setting forth the incumbency of the officers of the Lessee who are authorized to execute this Lease, the Assignment of Warranties, the Bill of Sale, and the Tax Indemnity Agreement, including a signature specimen of such officers, and (iv) attaching a current certificate of the Secretary of State of the State of New York as to the good standing of the Lessee in the State of New York.

3.5 Bills of Sale. The Lessor shall have received (a) copies of the bills of sale to the Lessee (or copies of the invoices to the Lessee together with evidence of payment thereof) from each Manufacturer of each of the Items of Equipment together with evidence that at the time of the delivery of such Items said Manufacturer had good and transferable title to said Items free and clear of all liens, charges and encumbrances, and warranting good title to such Items to the Lessee, (b) copies of the invoices to the Lessee from each Manufacturer covering the purchase price of such Items, (c) the Bill of Sale duly executed by the Lessee, and (d) the Certificate of Acceptance duly executed by the Lessee.

3.6 Tax Indemnity Agreement. The Lessor shall have received a Tax Indemnity Agreement with respect to the transactions contemplated hereby in all respects satisfac-



tory to the Lessor (the "Tax Indemnity Agreement"), duly executed by Lessee.

3.7 Opinion of Counsel to Lessee. The Lessor shall have received a favorable opinion of John Levin, Esq., counsel to the Lessee to the effect that:

(a) The Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of New York,

(b) This Lease, the Assignment of Warranties, the Bill of Sale, the Tax Indemnity Agreement and the Certificate of Acceptance has each been duly authorized, executed and delivered by the Lessee and constitutes the legal, valid and binding obligation of the Lessee enforceable in accordance with its terms,

(c) The execution and delivery by the Lessee of this Lease, the Assignment of Warranties, the Bill of Sale, the Tax Indemnity Agreement and the Certificate of Acceptance and the performance by the Lessee of its obligations hereunder and thereunder will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, its certificate of incorporation or by-laws, any indenture or other agreement or instrument to which the Lessee is a party or by which it or its property may be bound, or any applicable law or regulation of any governmental body, and will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, except upon the leasehold estate of the Lessee under this Lease and on the Equipment.

(d) No authorization, consent or approval on the part of any governmental body, state or federal, is required in connection with the lawful execution and delivery and performance by Lessee of this Lease, the Assignment of Warranties, the Bill of Sale, the Tax Indemnity Agreement and the Certificate of Acceptance.

(e) As to such other matters, with such exceptions and qualifications, and accompanied by such other documents, including appropriate recognitions of the interests of the Lessor in the Equipment from any fleet mortgagee having a lien thereon, as shall be satisfactory to the Lessor and its counsel.

3.7 Compliance Certificate. The Lessor shall have received a certificate from a duly authorized officer of the Lessee in the form of Exhibit E annexed hereto.

3.8 Equipment Description. The Lessor shall have received such serial numbers and other identifications of the Equipment as shall be necessary in order to enable the Lessor to protect its title in the Equipment.

3.9 Recording of Lease. The Lease shall have been recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303.

3.10 Proceedings; Form of Documents. All proceedings taken in connection with the Settlement Date and all documents necessary to the consummation thereof shall be satisfactory in form and substance to the Lessor and its counsel.

SECTION 4. TITLE AND MARKING OF THE EQUIPMENT.

4.1 Retention to Title. The Lessor hereby retains full legal title to the Equipment, and it is understood that the Lessee shall acquire no right, title or interest to the Equipment except its interest as Lessee hereunder, notwithstanding the delivery thereof to, and the possession and use thereof by, the Lessee.

4.2 Duty to Mark Equipment. The Lessee shall cause each Item of Equipment to be marked and will keep and maintain, plainly, permanently and conspicuously a plate or stencil printed in contrasting color on each Item of Equipment as follows:

"Title to this car is vested in a trustee under an Equipment Trust Agreement recorded under Section 11303 (formerly Section 20c) of the Interstate Commerce Act or vested in another person or entity and so recorded",

with appropriate changes thereof, and additions thereto, as from time to time may be required to protect the title of the Lessor to such Item of Equipment and its rights under this Lease. The Lessee will not use any Item of Equipment or exercise any control or dominion over the same during the term hereof until the required legend shall have been so marked, and will replace promptly any such word or words which may be removed, defaced or destroyed.

4.3 Insignia of Lessee. The Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee, or a sublease permitted under

this Lease, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Item of Equipment as a designation that might be interpreted as a claim of ownership.

SECTION 5. DISCLAIMER OF WARRANTIES.

AS BETWEEN THE LESSOR AND THE LESSEE, THE LESSOR LEASES THE EQUIPMENT, AS-IS, WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PURPOSE OR MERCHANTABILITY OF ANY ITEM OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) INTERFERENCE BY ANY PARTY OTHER THAN THE LESSOR WITH THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against any Manufacturer or contractor in respect thereof. The Lessor shall be entitled to receive and retain for its own account all proceeds arising from any such claim or right.

SECTION 6. LESSEE'S INDEMNITY.

6.1 Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor and its respective officers, employees, directors, agents, successors and assigns (collectively, the "Indemnitees"), from and against:

(a) any and all loss or damage of or to the Equipment, ordinary wear and tear excepted; and

(b) any claim, cause of action, damage or liability, cost or expense (including reasonable counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any Indemnatee (i) relating to any Item of Equipment, including, without limitation, the manufacture, purchase, delivery, installation, ownership, leasing or return of the Equipment, or as a result of the use, maintenance, marking, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as a result of any act or omission of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) arising out of this Agreement, the Bill of Sale or the Assignment of Warranties, (iv) as a result of claims for patent, trademark or copyright infringements, relating to the Equipment, (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or connected with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaption or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, including as a result of any claim for negligence or strict liability in tort, or (vi) any violation of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaption or maintenance thereof.

In the event the Lessee is required to make any payment under this Section 6.1, the Lessee shall pay such Indemnatee an amount which, after deduction of all taxes

required to be paid by such Indemnatee in respect of the receipt or accrual thereof under the laws of the United States or of any political subdivision thereof, calculated at the maximum applicable marginal statutory rates then in effect, shall be equal to the amount of such payment.

Anything in this Section 6 to the contrary notwithstanding, the Lessee shall in no case be obligated to reimburse or become liable to any Indemnatee for, or waive any claim arising in favor of the Lessee to the extent of, any losses, claims, liabilities and expenses arising from the willful misconduct or gross negligence of such Indemnatee.

6.2 Continuation of Indemnities and Assumptions.

The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii), (iv) or (v) of subsection (b) of Section 6.1 hereof occurring after the termination of this Lease, except for any such matters occurring before the return of the Equipment to the possession of the Lessor as provided in Section 13 or 15 hereof, as the case may be, and except for any such matters attributable to any action, inaction, event or condition occurring or existing before the return of the Equipment to the possession of the Lessor as provided in Section 13 or 15 hereof, as the case may be.

## SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules, including the rules of the Department of Transportation, the Interstate Commerce Commission and the interchange rules or supplements thereto of the Mechanical Division, Association of American Railroads, as the same may be in effect from time to time (the "Interchange Rules"), with respect to the use, maintenance and operation of each Item of Equipment. In case any Item of Equipment shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own expense, and title thereto shall be vested in the Lessor, provided, that the Lessee may contest in good faith the validity or application of any such law or rule in any manner which does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder.

## SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

8.1 Use and Maintenance. The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. So long as the Equipment shall be leased hereunder and until the Equipment is returned to the Lessor in accordance with the provisions of Section 13 and 15 hereof, the Lessee shall, at its own cost and expense, maintain and keep the Equipment in the same manner as the Lessee maintains equipment of the same type owned by the Lessee so as to insure that the Equipment is in good order, condition and

repair, ordinary wear and tear excepted, suitable for use in interchange in accordance with the Interchange Rules. Such use and maintenance shall be in compliance with all manufacturers' warranties and with all insurance policies required to be maintained by Lessee pursuant to Section 11.6 hereof. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment in a manner which adversely affects the value or utility of such Item of Equipment without the prior written authority and approval of the Lessor, which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

8.2 Responsibility for Damage to Equipment. In the event of any loss or damage to any Item of Equipment, or parts thereof, caused by the commodity contained therein, or incurred in the process of loading or unloading such commodity, the Lessee shall be responsible therefor, and shall indemnify the Lessor against all liability, costs, claims, loss or damage resulting therefrom.



SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, provided that, so long as an Event of Default shall not have occurred and be continuing hereunder, the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings diligently conducted, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination of the Lease. The Lessee agrees to give prompt written notice to the Lessor upon learning of any such claim, lien or charge, and to keep the Lessor apprised from time to time of all proceedings it shall take in contesting any of the same.

If the Lessee shall fail to perform or observe any of the terms of this Section 9, the Lessor may, in its discretion, but without any obligation to do so, perform all acts or make all expenditures necessary to remedy such failure, provided that the doing or making thereof shall not relieve the Lessee of any default in that respect. The Lessee shall promptly reimburse the Lessor for any amounts expended by the Lessor on behalf of the Lessee.

SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

10.1 Filing. Prior to the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will cause this Lease to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 USC Section 11303(a) of the Interstate Commerce Act and in such other places within or without the United States as the Lessor may reasonably request and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to any Item of Equipment or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of counsel reasonably satisfactory to the Lessor that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action, including any opinion of counsel required pursuant to this Section 10.1

10.2 Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to any local, state, Federal or foreign taxes, assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use,

payment, shipment, delivery or transfer of title under the terms hereof, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to all other payments to be made by it herein. Notwithstanding the foregoing, the Lessee shall not be obligated to pay, indemnify or save or hold harmless the Lessor from any Impositions (a) which are imposed by any Federal, New York State or New York City government or taxing authority on, or measured by, the net income of Lessor except as provided in the Tax Indemnity Agreement, (b) which are imposed by any Federal, New York State or New York City government or taxing authority on, or measured by, the gross income or gross receipts of the Lessor and are in lieu of a tax on, or measured by, the net income of Lessor except as provided in the Tax Indemnity Agreement or (c) which are imposed on the voluntary sale, transfer or other disposition by the Lessor of any Item of Equipment, except during the continuance of an Event of Default hereunder. The Lessee will also pay promptly all Impositions (including sales or use taxes, if any, on the initial purchase by the Lessor of the Equipment) which may be imposed upon any Item of Equipment, the use thereof, the earnings arising therefrom or the Lessor solely by reason of its ownership thereof, and will keep at all times each Item of Equipment free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions as long as it shall promptly notify the Lessor in writing thereof and is contesting in good faith and by appropriate legal proceedings diligently conducted such Impositions and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor in the Equipment or hereunder. If any Impositions shall have been charged or levied

against the Lessor directly and paid by the Lessor, the Lessee shall promptly reimburse the Lessor therefor. Any payment required to be made by Lessee hereunder shall include an amount equal to all taxes (calculated at the maximum applicable marginal statutory rates then in effect) required to be paid by Lessor on the receipt or accrual thereof.

In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this Section 10.2, the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns in such manner as to show the interest of the Lessor in the Equipment as shall be satisfactory to the Lessor or, of such requirement and will prepare and deliver such returns and reports to the Lessor within a reasonable time prior to the time such returns and reports are required to be filed. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

In the event that any Imposition accrues or becomes payable or is levied or assessed (which is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

SECTION 11. RISK; PAYMENT FOR CASUALTY OCCURRENCE; INSURANCE.

11.1 Risk. Commencing on the Settlement Date and continuing until the termination of this Lease and the return by the Lessee of the Equipment to the Lessor, the Lessee assumes the entire risk of any Casualty Occurrence, as defined below, or any liability of the Lessor from any cause whatsoever arising under this Lease, and no such Casualty Occurrence or liability shall relieve the Lessee of its obligations hereunder.

11.2 Definition-Casualty Occurrence. For purposes of this Section 11, a Casualty Occurrence with respect to any Item of Equipment shall mean any of the following events with respect to such Item of Equipment which shall be proved to the satisfaction of Lessor: (i) the actual or constructive total loss of such Item of Equipment; (ii) such Item of Equipment shall become lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for intended use for any reason whatsoever; (iii) any damage to such Item of Equipment which results in an insurance settlement with respect thereto on the basis of a total loss; or (iv) the condemnation, confiscation or seizure of, or requisition of title or use of, such Item of Equipment.

11.3 Deprivation Constituting A Casualty Occurrence. Upon the occurrence of a Casualty Occurrence, the Lessee shall promptly notify the Lessor of the occurrence thereof and, within 10 days of the date of such occurrence, pay or cause to be paid in immediately available funds: (i) an amount computed as of the date of such Casualty Occurrence equal to the Purchase Price of such Item of Equipment multiplied by the percentage set forth in Exhibit F annexed

hereto for the period in which the Casualty Occurrence occurs (the "Casualty Value"); (ii) accrued rentals on a daily basis, if any, in respect of such Item of Equipment to the date of receipt of the Casualty Value by the Lessor, and (iii) all other unpaid amounts due hereunder in respect of such Item. At such time (but not before) as the Lessor has received the sum of (i), (ii) and (iii) above, the obligation of the Lessee to pay rent hereunder with respect to such Item of Equipment shall terminate and the Lessor will transfer to the Lessee, without recourse or warranty, all of the Lessor's right, title and interest, if any, in and to such Item of Equipment with respect to which such Casualty Occurrence has occurred. Whenever any Item of Equipment shall suffer a Casualty Occurrence at the end of the term of this Lease with respect to such Item and before such Item shall have been returned in the manner provided in Section 13 hereof, the Lessee shall pay to the Lessor a sum equal to 20% of the Purchase Price of such Item of Equipment.

11.4 Deprivation Not Constituting A Casualty Occurrence. In the event of damage to any Item of Equipment not constituting a Casualty Occurrence, the Lessee shall remain obligated to make all payments of rent for such Item which may become due hereunder in the same manner as if such damage had not occurred and the Lessee shall promptly repair and restore such Item of Equipment to the condition it was in immediately prior to the occurrence of any such damage. So long as no Event of Default shall have occurred and be continuing hereunder, all payments from insurance proceeds or otherwise with respect to any such damage shall be paid over to the Lessee upon receipt of satisfactory evidence by the Lessor that the Lessee has repaired such damaged Item of Equipment. Should an Event of Default have occurred and be continuing hereunder, all such payments shall be paid over

to and be retained by the Lessor unless such Event of Default is cured pursuant to this Lease, in which case Lessee shall again be entitled to receive and retain for its own account such proceeds.

11.5 Application Of Payments. Upon the occurrence of any Casualty Occurrence, the Lessor shall be entitled to and shall receive the entire award, judgment, settlement, insurance proceeds or payments and all installments thereof for application in reduction of Lessee's obligations under Section 11.3 hereof. The Lessee hereby assigns to the Lessor any right or interest the Lessee may have or may hereafter acquire in any such award or payment. Provided that no Event of Default shall have occurred and be continuing, and provided further that the Lessee shall have paid in full the Casualty Value and all such other amounts as shall then be due and payable under this Lease, the Lessor agrees to pay over to Lessee the excess of any insurance proceeds over the Casualty Value and any expenses reasonably incurred by the Lessor and not reimbursed by the Lessee in connection with the collection of such insurance proceeds.

11.6 Insurance. The Lessee will, at all times throughout the term of this Lease and during any renewal term or storage period, at its own expense, keep or cause to be kept each Item of Equipment insured by a reputable insurance company or companies in amounts and against risks (including comprehensive general public liability insurance) and with deductibles and terms and conditions or programs of self-insurance not less than the insurance, if any, maintained by the Lessee with respect to similar equipment which it owns or leases, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard. Without limiting the foregoing, the Lessee will:

(a) Keep each Item of Equipment insured against casualty in an amount not less than the Casualty Value attributable to such Item of Equipment, provided that such coverage may provide for deductible amounts or programs of self-insurance comparable to that maintained by Lessee with respect to similar equipment it owns or leases and in any event in accordance with prudent industry standards. The policies of insurance covering the Equipment shall provide that (i) loss, if any, thereunder shall be payable to the Lessor and the Lessee as their interests shall appear; and (ii) loss, if any, thereunder shall be adjusted with the insurer by the Lessee, subject to approval by the Lessor if the loss from any one occurrence equals or exceeds \$500,000; and

(b) Maintain general public liability insurance against bodily injury, death or property damage arising out of the use or operation of the Equipment with general liability limits of not less than \$10,000,000 in the aggregate, with umbrella coverage of not less than \$50,000,000, provided that such coverage may provide for deductible amounts in amounts or programs of self-insurance comparable to that maintained by the Lessee with respect to similar equipment which it owns or leases and in any event in accordance with the prudent industry standard. Such policies shall insure the Lessor regardless or any breach or violation of any warranty, declaration or condition therein contained in such policy by the Lessee or any other person (other than the Lessor, but only in respect of its coverages).

All proceeds of insurance received by any party other than the Lessee with respect to any Items of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid thereby to the Lessee upon reasonable proof



that any damage to any Item with respect to a Casualty Occurrence shall be credited thereby toward the payment required by this Section 11 with respect to such Casualty Occurrence.

No policy maintained pursuant to this Section 11.6 shall, in respect of the interests of the Lessor in such policy, invalidate the coverage thereof due to any action or inaction of the Lessee or any other person (other than the Lessor, but only in respect of its coverages). The Lessee shall furnish the Lessor with certificates or other satisfactory evidence of maintenance of the insurance required hereunder or with a certificate of reputable insurance agents not affiliated with the Lessee stating that the insurance maintained by the Lessee complies with the requirements of this Section, and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies. All such policies shall provide that the same shall not be cancelled or materially changed without at least 30 days' prior written notice to the Lessor.

In the event the Lessee shall fail to obtain and/or maintain insurance in accordance with the provisions of this paragraph 11.6, the Lessor shall have the right, but not the obligation, at its discretion to obtain such insurance with respect to the Equipment as the Lessor deems necessary, and the Lessee shall be obligated to reimburse the Lessor on demand for the payment by the Lessor of all premiums therefor.

## SECTION 12. ANNUAL REPORTS.

12.2 Duty of Lessee to Furnish. On or before the first May 1 which occurs more than four months following the

date of this Lease and each succeeding May 1 during the term of this Lease, the Lessee will furnish to the Lessor an accurate statement, as of the preceding December 31, (a) showing the amount, description and identifying numbers of the Items of Equipment then leased hereunder and the amount, description and identifying numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the date of this Lease), and (b) certifying in the case of all Equipment repainted during the period covered by such statement, that the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2 Lessor's Inspection Rights. The Lessor shall have the right during normal business hours and upon reasonable notice at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

### SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the original term or Renewal Term of this Lease, the Lessee will, at its own risk, cost and expense, at the request of the Lessor, deliver possession of the Equipment to the Lessor upon no more than three storage tracks of the Lessee selected by the Lessee and reasonably satisfactory to the Lessor, and permit the Lessor to store such Equipment on such tracks for a period not exceeding 180 days and, at the direction of Lessor, to transport any Item Equipment upon disposition thereof, at any time within such period, to the nearest

interchange point with a connecting carrier for shipment, the movement and storage of such Items to be at the expense and risk of the Lessee. During any such storage period, the Lessee, at its own expense, will continue the insurance required hereunder and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any Item of Equipment, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence. Each Item returned to the Lessor pursuant to this Section 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear expected, (ii) meet the standards then in effect for railroad equipment of the same type and age as the Equipment under the Interchange Rules and/or the applicable rules of any governmental agency or other organization with jurisdiction, (iii) have been maintained in accordance with the provisions of Section 8 hereof and (iv) have attached or affixed thereto any special device considered an accession thereto as provided in Section 7 or 8 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee, at its expense, shall maintain the Equipment in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances, which maintenance shall in no event be to a standard lower than that required by industry standards.

The assembling, delivery, preparation for shipment and storage of the Equipment as hereinbefore provided are of the

essence of this Lease, and upon application to any court having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, store and prepare for shipment the Equipment. All amounts earned in respect of the Items of Equipment after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

#### SECTION 14. DEFAULT.

14.1 Events of Default. Each of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any installment of Fixed Rental or of any Casualty Value when due and such default shall continue for 10 days; or

(b) Default shall be made in the observance or performance of any covenant, condition or agreement on the part of Lessee set forth in Section 11.6 or 16.1 hereof; or

(c) Default shall be made in the observance or performance of any other of the covenants, conditions or agreements on the part of the Lessee contained herein or in the Assignment of Warranties or Bill of Sale and such default shall continue unremedied for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; or

(d) Any representation or warranty made by the Lessee herein or in the Assignment of Warranties or Bill

of Sale or in any other statement or certificate furnished to the Lessor in connection herewith or therewith proves untrue in any material respect when made; or

(e) The Lessee becomes insolvent or bankrupt, or admits in writing its inability to pay its debts as they may mature, or makes an assignment for the benefit of creditors, or applies for, or consents to, the appointment of a trustee or receiver for the Lessee or, for any substantial part of its property, or the Lessee shall make any voluntary assignment or transfer of the Lessee's interest as the Lessee hereunder in a manner, or to a person, not permitted by the terms hereof; or

(f) A trustee or receiver is appointed for the Lessee, or for any substantial part of its property, and is not discharged within 60 days after such appointment; or

(g) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy or similar law for the relief of debtors, are instituted by or against the Lessee, and if instituted against the Lessee, are not dismissed within 60 days after such institution; or

(h) The Lessee shall default in any of its obligations under the Tax Indemnity Agreement and such default shall continue for 10 days.

14.2 Remedies. If an Event of Default has occurred and is continuing, the Lessor, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance

by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate, but the Lessee shall remain liable as hereinafter provided, and, thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located, without judicial process if this can be done without breach of the peace, and take possession of all or any of such Equipment, and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatsoever; but the Lessor shall, nevertheless, have the right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by a fraction of which the numerator is such accrued number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts that the Lessor, in its sole discretion, shall specify: (i) a sum, with respect to the Items of Equipment, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for the Items of Equipment which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to the Items of Equipment, such present value to be computed on the basis of a 8% per annum discount, compounded semi-annually from the respective dates upon which rental would have been payable

hereunder had this Lease not been terminated, over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Items of Equipment during such period, such present value to be computed on the basis of a 8% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or, if any such Item of Equipment is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value of the Equipment as of the Casualty Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Equipment at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clauses (i) or (ii) with respect to such Item, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Items, as of the Casualty Payment Date on or next preceding the date of termination, over the net proceeds of such sale. The Lessee will pay all reasonable expenses, including attorneys' fees, incurred by the Lessor in enforcing its remedies under the terms of this Lease.

14.3 Cumulative Remedies. The Lessor's remedies hereunder shall not be deemed exclusive, but shall be cumu-

lative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rental payments due hereunder, and agrees to make the rental payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the leasing of the Equipment.

14.4 Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted to it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such rights upon the continuation or recurrence of any such contingencies or similar contingencies.

14.5 Notice of Event of Default. The Lessee agrees to furnish the Lessor promptly upon becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof.

#### SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1 Lessee's Duty to Return. If the Lessor shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk forthwith



deliver possession of the Equipment to the Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of Section 13 hereof as if the Equipment were being returned upon the termination of this Lease. For the purpose of delivering possession of any Item of Equipment as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith (including), without limitation, giving prompt telegraphic and written notices to the Association of American Railroads and all railroads to which any Item of Equipment has been interchanged or which may have possession thereof to return such Item) and at the usual speed place such Item of Equipment upon such storage tracks owned or leased by the Lessee as the Lessor reasonably may designate;

(b) permit the Lessor to store such Item on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Items have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport such Item to any place on storage tracks owned or leased by the Lessee or to any interchange point with a connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transportating of the Equipment as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court having jurisdiction the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store,

insure and transport the Equipment. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment insured and in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Item, to inspect the same.

15.2 Lessor Appointed Lessee's Agent. Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Item of Equipment to the Lessor, to demand and take possession of such Item of Equipment in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item of Equipment.

#### SECTION 16. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

16.1 Lessee's Rights to the Equipment. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession, use and quiet enjoyment of the Equipment in accordance with the terms of this Lease. The Lessee will not without the prior written consent of the Lessor, assign or transfer its leasehold interest under this Lease in any of the Equipment or merge or consolidate with, or be acquired by, any person or entity.

16.2 Use and Possession by Lessee. The Lessee agrees that the Equipment will be used solely within the continental United States. The Lessee agrees that it will

not, without the prior written consent of the Lessor, assign this Lease or any of its rights hereunder. The Lessee shall be entitled as long as it shall not then be in default under this Lease, to sublease any Item of Equipment to, or to permit its use under the terms of a contract by, (i) a railroad company or companies incorporated in the United States of America (or any state thereof or District of Columbia), upon railroad lines in the continental United States owned or operated by such railroad company or companies, or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers in the usual interchange of traffic in the continental United States or (ii) to responsible companies other than railroad companies for use in their business, in either case only upon and subject to all of the terms and conditions of this Lease; provided, that Lessee shall not sublease any Equipment to, or permit its use by, any person in whose hands such Equipment would not qualify as Section 38 property within the meaning of the Internal Revenue Code of 1954, as amended. Lessor shall not unreasonably withhold its consent to a request by Lessee to permit any Item of Equipment to be used from time to time in Canada or Mexico.

So long as no Event of Default, or any event which with the lapse of time or giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee may receive and retain for its own account such compensation for assignment or subletting the Equipment and/or for use of the Equipment by others as the Lessee may determine. Without limiting the foregoing, it is contemplated that the Lessee shall collect and retain for its own account all mileage allowances, rentals and/or other compensation (hereinafter referred to as "Mileage") payable

by carriers by reason of the use, ownership or operation of the Equipment, and if for any reason the Lessor shall receive any Mileage then, unless an Event of Default (or event which with the lapse of time or giving of notice, or both, would become an Event of Default) shall have occurred and be continuing, the Lessor shall promptly remit without interest said Mileage to the Lessee. No such assignment, sublease or permitted use shall relieve the Lessee of any of the obligations, liabilities or duties hereunder which shall be and remain those of a principal and not a surety. Any such assignment, sublease or permitted use shall be in all respects subject and subordinate to this Lease.

SECTION 17. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY THE LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of the rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the obligation on the part of the Lessee to pay also an amount equal to interest on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid at a variable rate per annum equal to 2% above the prime commercial lending rate of The Bank of New York as publicly announced to be in effect from time to time, but in no event shall such interest rate exceed the maximum interest rate permitted by law. All such interest shall be calculated on the basis of a 360-day year for the actual number of days involved.

SECTION 18. PURCHASE OPTION.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, at the

end of the original term or Renewal Term of this Lease the Lessee may be written notice delivered to the Lessor not more than 270 days and not less than 120 days prior to the end of such original term or Renewal Term of this Lease, elect to purchase all but not less than all of the Equipment then covered by this Lease for the then fair market value (as hereinafter defined) thereof. Such election shall be irrevocable.

The "fair market value" of an Item of Equipment shall be equal in amount to the value which would obtain in an arm's-length transaction between an informed and willing buyer and an informed and willing seller under no compulsion to sell and, in such determination, (i) it shall be assumed that the Equipment is in the condition and repair required by Sections 8 and 13 hereof and is free and clear of all liens, claims and encumbrances, (ii) the value of the additions, modifications and improvements as to which the Lessee retains title pursuant to Section 8 shall not be included and (iii) costs of removal from the location of current use shall not be a deduction from such value. If, after 30 days from the giving of notice by the Lessee of the Lessee's election to purchase, the Lessor and the Lessee are unable to agree upon a determination of the fair market value of the Equipment, such value shall be determined by an appraiser in accordance with the appraisal procedure set forth in the definition of fair rental value set forth below.

#### SECTION 19. RENEWAL OPTIONS.

At the end of the original term and provided that no Event of Default shall have occurred and be continuing under this Lease, and provided that this Lease has not been

previously terminated, the Lessee shall have the option to renew this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for either:

(a) a renewal term of 5 years (the "Fair Market Renewal Term"), commencing on the expiration of the original term, upon the same terms and conditions as this Lease for the original term, except that the semi-annual Fixed Rental payments payable for and during such Fair Market Renewal Term shall be equal to the fair market rental (as hereinafter defined) and except further that the Casualty Value of each Item of Equipment during such Fair Market Renewal Term shall be equal to 20% of the Purchase Price of such Item of Equipment; or

(b) a renewal term (the "Fixed Rental Renewal Term") of not less than one year nor greater than the Maximum Renewal Term (as hereinafter defined), commencing on the expiration of the original term, upon the same terms and conditions as this Lease during the original term, except that the semi-annual Fixed Rental payments payable for and during such Fixed Rental Renewal Term shall be equal to 50% of the average semi-annual Fixed Rental payments during the original term for the Items of Equipment to be subject to such Fixed Rental Renewal Term and except that the Casualty Value of each such Item of Equipment during such Fixed Rental Renewal Term shall be equal to the fair market value of such Item at the commencement of such Fixed Rental Renewal Term and declining over the Fixed Rental Renewal Term on a straight line basis to 20% of the Purchase Price of such Item.

At the end of any Fixed Rental Renewal Term and provided that no Event of Default shall have occurred and be

continuing under this Lease, and provided that this Lease has not been previously terminated, the Lessee shall have the option to renew this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for another Fixed Rental Renewal Term upon the same terms and conditions as set forth in (b) above.

For purposes hereof, "Renewal Term" shall mean either a Fair Market Renewal Term or a Fixed Rental Renewal Term.

The Lessee shall give the Lessor written notice of its election to renew this Lease for a Renewal Term not more than 270 days nor less than 120 days prior to the commencement of such Renewal Term. Such election shall be irrevocable.

The "fair rental value" of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease. If after 30 days from the giving of notice by the Lessee of the Lessee's election to renew this Lease, the Lessor and the Lessee are unable to agree upon a determination of the fair rental value of the Items of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent appraiser. The term "appraiser" shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee, and the third designated by the first two selected. The appraiser

shall be instructed to make such determination of fair rental value (in the case of a panel of three appraisers, such determination shall equal the average of the determinations of the three appraisers) within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of all appraisers shall be borne by the Lessee.

The "Maximum Renewal Term" shall be that period with respect to any Item of Equipment which, when added to the original term and each expired Renewal Term, including the then expiring Renewal Term, shall equal 80% of the total economic useful life of such Item, provided that at the expiration of such Maximum Renewal Term such Item shall have an uninflated residual value equal to no less than 20% of the Purchase Price of such Item. The total economic useful life and uninflated residual value of such Item shall be determined by the appraisal procedure set forth in the definition of fair rental value.

Unless the Lessee has elected to renew this Lease in respect of the Items of Equipment then leased hereunder as provided in this Section 19, or exercises its right under Section 18 hereof and purchases such Equipment, all Items of Equipment shall be returned to the Lessor at the end of the original term hereof, in accordance with Section 13 hereof.

## SECTION 20. MISCELLANEOUS.

20.1 Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed



to have been given when deposited in the United States mails, first class postage prepaid, addressed as follows:

If to the Lessor: The Bank of New York  
48 Wall Street  
New York, New York 10015  
Attention: Leasing Department.

If to the Lessee: General American Transportation  
Corporation.  
120 S. Riverside Plaza  
Chicago, Illinois 60606  
Attention: Treasurer

or addressed to such other address as a party hereto shall hereafter furnish to the other party hereto in writing.

20.2 Execution in Counterparts. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterpart shall constitute but one and the same instrument.

20.3 Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

20.4 Fees and Expenses. The Lessee agrees to pay all fees and expenses (including reasonable attorneys' fees) incurred by Lessor in connection with this Lease and all documents executed and delivered in connection herewith and

all amendments, modifications and waivers hereof and thereof.

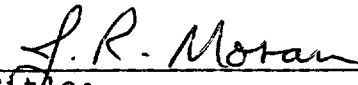
20.5 Law Governing. This Lease shall be construed in accordance with the internal laws of the State of New York without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized officers as of the date first above written.

THE BANK OF NEW YORK

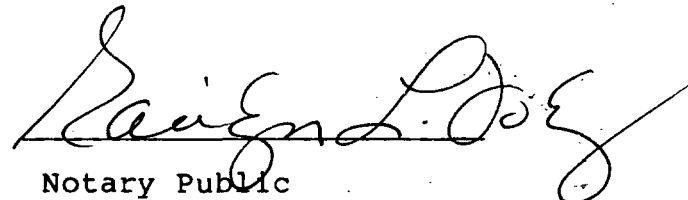
By:   
Title: Vice President

GENERAL AMERICAN TRANSPORTATION  
CORPORATION

By:   
Title:

*Illinois*  
STATE OF ~~NEW YORK~~ )  
*Cook* ) ss.:  
COUNTY OF ~~NEW YORK~~ )

On the *22<sup>nd</sup>* day of November, 1984, before me personally  
came *JAMES R. MORAN*  
to me known, who, being by me duly sworn, did depose and say  
that he resides at No. *1143 WEST ILLINOIS*  
*PALATINE, ILLINOIS*  
and that he is the *SENIOR VICE PRESIDENT* of  
GENERAL AMERICAN TRANSPORTATION CORPORATION, the corporation  
described in and which executed the foregoing instrument;  
and that he signed his name thereto by order of the board of  
directors of said corporation.

  
Notary Public

STATE OF NEW YORK       )  
                                  ) ss.:  
COUNTY OF NEW YORK     )

On the 2<sup>nd</sup> day of November, 1984 before me personally came Deborah Perkins to me known, who, being by me duly sworn, did depose and say that she resides at 19 Chelsea Court, Ramsey, New Jersey 07416; that she is a Vice President of THE BANK OF NEW YORK, the corporation described in and which executed the foregoing instrument; and that she signed <sup>ev</sup> his name thereto by order of the Board of Directors of said corporation.

Kathleen Zahn  
Notary Public

My Commission Expires:

KATHLEEN I. ZAHN  
Notary Public, State of New York  
No. 01ZA 4793269  
Qualified in Rockland County  
Commission Expires March 30, 1985

EXHIBIT A

<u>Classification and Description</u>	<u>Manufacturer</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers</u>	<u>Purchase Price per Item of Equipment</u>
DOT 111A100-W-1 20,580 Gallon Sulfuric Acid	Trinity Industries, Inc.	4	GATX 16784 thru GATX 16787	\$46,137.00
DOT 111A100-W-1 20,580 Gallon Resins	Trinity Industries, Inc.	5	GATX 16788 thru GATX 16792	46,979.00
DOT 111A100-W-1 13,818 Gallon Talicor lining Slurry	Trinity Industries, Inc.	7	GATX 22063-64 GATX 22066-67 GATX 22071-73	44,898.00
DOT 111A100-W-1 21,000 Gallon Toluene	Trinity Industries, Inc.	3	GATX 16793 thru GATX 16795	45,641.00

EXHIBIT B

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that General American Transportation Corporation, a New York corporation, with its principal place of business at 120 S. Riverside Plaza, Chicago, Illinois 60606 ("Seller"), for and in consideration of the sum of Ten Dollars and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, convey and deliver to The Bank of New York ("Purchaser"), and its successors and assigns, all of its right, title and interest in and to the following described equipment (collectively, the "Equipment"), to wit:

TO HAVE AND TO HOLD the Equipment unto the Purchaser, and its successors and assigns, to and for its and their use, forever.

(a) Seller represents and warrants to Purchaser that it has good and marketable title in and to the Equipment; that it is the lawful owner of the Equipment and has the right to transfer the Equipment; that the Equipment is free and clear of any and all liens, charges, liabilities, mortgages, security interests and encumbrances whatsoever; and that execution and delivery of this Bill of Sale vests in Purchaser good and marketable title to the Equipment, free and clear of any and all liens, security interests, charges, liabilities, mortgages and encumbrances whatsoever.

Assignment or be obligated to perform any of the obligations or duties of the Assignor under any Purchase Agreement or to make any payment or, except to the extent set forth in paragraph 3 hereof, to take any other action to collect or enforce any claim for any payment assigned hereunder.

5. Further Assurances. The Assignor agrees that at any time and from time to time, upon the written request of the Assignee, the Assignor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Assignee may reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted.

6. Assignor's Representations, Warranties and Covenants. The Assignor does hereby represent and warrant that as of the Settlement Date it will have paid in full when due all of the purchase price for the Equipment being purchased by the Assignee from the Assignor on the Settlement Date required under each Purchase Agreement and will have good and marketable title to the Equipment free and clear of all liens, charges and other encumbrances of any nature. The Assignor does hereby further represent and warrant that the Assignor has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment shall remain in effect, the whole or any part of the rights hereby assigned or any of its rights with respect to the Equipment under any Purchase Agreement not assigned hereby, to anyone other than the Assignee.

7. No Amendment of Purchase Agreements. The Assignee agrees that it will not enter into any agreement that would amend, modify, supplement, rescind, cancel or terminate any Purchase Agreement without the prior written consent of the Assignor.

8. Execution of Assignment. This Assignment is being executed by the Assignor and the Assignee concurrently with the execution and delivery of the Lease.

9. Governing Law. This Assignment shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to principles of conflict of laws.

10. Counterparts. This Assignment may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterpart shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first above written.

GENERAL AMERICAN  
TRANSPORTATION CORPORATION

By: \_\_\_\_\_

THE BANK OF NEW YORK

By: \_\_\_\_\_



SCHEDULE I

LIST OF SELLERS

TRINITY INDUSTRIES, INC.

EXHIBIT D

CERTIFICATE OF ACCEPTANCE

TO: THE BANK OF NEW YORK (the "Lessor")

The undersigned, a duly appointed representative of General American Transportation Corporation (the "Lessee"), pursuant to the Equipment Lease, dated as of \_\_\_\_\_, 1984, between the Lessor and the Lessee (the "Lease"), hereby certifies that I have inspected, received, approved and accept delivery on behalf of the Lessee and under the Lease of the Items of Equipment described in Schedule A annexed hereto.

PLACE ACCEPTED:

DATE OF ACCEPTANCE:

The undersigned further certifies that each of said Items of Equipment is in good order and condition, conforms to the Lessee's specifications therefor and that each such Item has been marked in accordance with the provisions of Section 4.2 of the Lease. The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer of each said Item of Equipment.

Dated:

GENERAL AMERICAN  
TRANSPORTATION CORPORATION

By: \_\_\_\_\_

SCHEDULE A

<u>Classification and Description</u>	<u>Manufacturer</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers</u>	<u>Purchase Price per Item of Equipment</u>
DOT 111A100-W-1 20,580 Gallon Sulfuric Acid	Trinity Industries, Inc.	4	GATX 16784 thru GATX 16787	\$46,137.00
DOT 111A100-W-1 20,580 Gallon Resins	Trinity Industries, Inc.	5	GATX 16788 thru GATX 16792	46,979.00
DOT 111A100-W-1 13,818 Gallon Talicor lining Slurry	Trinity Industries, Inc.	7	GATX 22063-64 GATX 22066-67 GATX 22071-73	44,898.00
DOT 111A100-W-1 21,000 Gallon Toluene	Trinity Industries, Inc.	3	GATX 16793 thru GATX 16795	45,641.00

EXHIBIT E

COMPLIANCE CERTIFICATE

The undersigned, a \_\_\_\_\_ of General American Transportation Corporation (the "Lessee"), hereby certifies that on the date hereof the Lessee is in compliance with all of the terms, covenants and conditions of the Equipment Lease, dated as of November 2, 1984, between the Lessee and The Bank of New York, that there exists no Event of Default as set forth in Section 14.1 of said Equipment Lease, and that the representations and warranties contained in said Equipment Lease are true and correct with the same effect as though such representations and warranties had been made on the date hereof.

\_\_\_\_\_

Dated:

## EXHIBIT F

CASUALTY VALUES

<u>Period</u>	<u>Casualty Value</u>
11/2/84 - 4/30/85	104.73648
5/1/85 - 10/31/85	104.18614
11/1/85 - 4/30/86	105.53307
5/1/86 - 10/31/86	104.68295
11/1/86 - 4/30/87	105.24739
5/1/87 - 10/31/87	104.08639
11/1/87 - 4/30/88	104.02338
5/1/88 - 10/31/88	102.55015
11/1/88 - 4/30/89	101.86213
5/1/89 - 10/31/89	100.00984
11/1/89 - 4/30/90	98.68306
5/1/90 - 10/31/90	100.47032
11/1/90 - 4/30/91	98.39043
5/1/91 - 10/31/91	99.86294
11/1/91 - 4/30/92	97.02303
5/1/92 - 10/31/92	98.10460
11/1/92 - 4/30/93	94.48902
5/1/93 - 10/31/93	95.09725
11/1/93 - 4/30/94	90.69469
5/1/94 - 10/31/94	90.74320
11/1/94 - 4/30/95	86.22610
5/1/95 - 10/31/95	85.95861
11/1/95 - 4/30/96	81.38917
5/1/96 - 10/31/96	80.77744
11/1/96 - 4/30/97	76.14985
5/1/97 - 10/31/97	75.16335
11/1/97 - 4/30/98	70.47134
5/1/98 - 10/31/98	69.07702
11/1/98 - 4/30/99	64.31379
5/1/99 - 10/31/99	62.47592
11/1/99 - 4/30/00	57.63413
5/1/00 - 10/31/00	55.31404
11/1/00 - 4/30/01	50.38573
5/1/01 - 10/31/01	47.54159
11/1/01 - 4/30/02	42.51818
5/1/02 - 10/31/02	39.10474
11/1/02 - 4/30/03	33.97691
5/1/03 - 10/31/03	29.94521
11/1/03 - 4/30/04	24.70291
5/1/04 - 10/31/04	20.00000